

## **ORDINANCE NO. 3574**

**AN INTERIM ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, RENEWING A MORATORIUM ON THE PROCESSING OR ACCEPTING OF APPLICATIONS, PERMITS OR LICENSING AND ESTABLISHMENT FOR ANY BUILDING OR LAND USE ACTIVITY INVOLVING THE ESTABLISHMENT OF COLLECTIVE GARDENS AND DISPENSARIES, PROVIDING FOR A PUBLIC HEARING, ESTABLISHING AN EFFECTIVE DATE, ADOPTING FINDINGS OF FACT, AND PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.**

**WHEREAS, the City Council has adopted Interim Ordinance 3558 renewing a moratorium on the establishment of Medical Cannabis Collective Gardens and Dispensaries for a period of six months; and**

**WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana under state not federal law; and**

**WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes"; and**

**WHEREAS, the Washington State Department of Health opines that it is "not legal to buy or sell" medical marijuana and further opines that "the law [chapter 69.51A RCW] does not allow dispensaries," leaving enforcement to local officials; and**

**WHEREAS, the City Council finds that the sale of marijuana, no matter how designated as dispensaries or collective gardens, is currently prohibited by state and federal law; and**

**WHEREAS, the Washington State Legislature passed ESSSB 5073 which attempted to clarify the legality of medical marijuana dispensaries and collective or co-operative grow operations under state law and was partially vetoed by the Governor; and**

**WHEREAS, as a result of the recent passage of ESSSB 5073 and partial veto by the Governor, the state has failed to clarify exactly what, under state law, shall be permitted in regards to the establishment of collective gardens and what local governments role is; for example, certain sections that were not vetoed make reference to other sections that were vetoed; and**

**WHEREAS, prior to issuing her partial veto, the Governor received a letter signed by Washington's two U.S. Attorneys, Michael Ormsby and Jennifer Durkan, and in their letter they wrote that marijuana is a Schedule I controlled substance under federal law and, as such, "growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such**

activities” and these U.S. Attorneys also concluded, “state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA”; and

WHEREAS, a similar letter dated January 17, 2012, was received by the Clark County Board of Commissioners seeking guidance from the U.S. Department of Justice stating in summary that principles expressed in the letter to the Governor similarly apply with equal force to local employees and elected officials; and

WHEREAS, Gov. Chris Gregoire filed a petition with the U.S. Drug Enforcement Administration asking the agency to reclassify marijuana as a Schedule 2 drug, which will allow its use for treatment through prescriptions by doctors and filled by pharmacists, to which Governor Lincoln Chafee of Rhode Island also signed; and

WHEREAS, the City's current zoning and business licensing regulations do not address medical marijuana dispensaries, related facilities or cultivation through collective gardens in a comprehensive fashion and without such zoning and thorough study of the issue may allow such establishments to be located in areas where the impacts associated with such facilities may be detrimental to the community absent a moratoria; and

WHEREAS, RCW 35A.63.220, RCW 36.70A.390, RCW 35.63.200 and common law all authorize cities: i) to adopt moratoria to preserve the status quo while new plans or regulations are considered and prepared, ii) to hold a public hearing on the moratorium within 60 days of the commencement of the moratorium, and iii) to renew such moratoria subsequent to a public hearing upon the adoption of findings of fact; and

WHEREAS, passage of ESSSB 5073 and its partial veto (now codified in RCW 69.51A) fails to: i) fully address the issues that are or may impact directly or indirectly Mount Vernon, including the siting of collective gardens and ancillary marijuana businesses, ii) the continued conflict between State and Federal law which puts the City in a precarious position regarding the regulation of marijuana and marijuana businesses and iii) the legal uncertainty that exists regarding local jurisdiction authority and role in land uses surrounding medical marijuana; and

WHEREAS, RCW 69.51A.140 authorizes cities to regulate and enforce zoning provisions on collective gardens, including the location and operation of collective gardens; and

WHEREAS, the potential of 45 marijuana plants and 72 ounces of marketable marijuana under the definition of collective garden by current state law stored in a single location within the City, in a neighborhood, near schools, or by public parks, etc., poses increased risks of crime and associated impacts of access to such a significant quantity of a federally prohibited Schedule I drug and that there is further a potential under state law that persons could attempt to create multiple collective gardens on single parcels of property which may include large scale indoor hydroponic grow operations in warehouses or similar facilities; and

WHEREAS, the City Council finds that secondary negative impacts of associated criminal activity with marijuana dispensaries and cultivation exist and include but are not limited

to: a) theft and armed robbery of the marijuana products grown, b) illegal sales of the marijuana product grown, c) illegal open use of marijuana products at grow sites and unwilling exposure to secondary smoke by the public, and d) inability for police to readily distinguish what may be a legal collective garden for legitimate medical marijuana use by qualified patients from an illegal grow operation for sale and distribution; and

WHEREAS, the City Council finds that there are secondary negative impacts of possible public health and safety risks from collective gardens and include but are not limited to: a) fire hazards from grow lights and drying equipment; b) waste products, fertilizers and grow chemicals infiltrating ground water and/or sewer systems causing clean water issues; c) improper disposal of agriculture waste after harvest; d) adulteration of neighboring lands and crops if seeds drift; e) increased traffic trips and activity during unusual hours; and

WHEREAS, the City Council finds there are secondary negative impacts to economic development, public safety and community appearance or aesthetics in the event of the unregulated establishment of collective gardens in certain areas such as: a) commercial business districts, b) residential neighborhoods, and c) near churches, schools, parks and other places frequented by children; and

WHEREAS, the citizens of Mount Vernon would be well served if the City more fully addressed and understood the potential effects and potential permissible uses upon neighboring properties and the community as a whole prior to allowing for their use; and

WHEREAS, the City needs time to review existing information, enacted changes to state law on the effects of these potential uses, and conflicts between state and federal law, in order to evaluate where such activities should be permitted if any in the event the City is required to accommodate such activity and to review the Mount Vernon Municipal Code in a comprehensive fashion to determine whether it sufficiently addresses the impacts of such uses, and if not, to adopt appropriate regulation; and

WHEREAS, the Office of the City Attorney in conjunction with the Director of Community and Economic Development continue to examine the legality and potential adoption of regulations involving medical marijuana dispensaries, production facilities, processing facilities, and collective gardens including but not limited to review of pending disputes and conflicts between federal and state law enforcement authorities regarding the legality of medical marijuana under any circumstances and pending petitions to the DEA to re-classify marijuana notwithstanding the enactment of RCW 69.51A; and

WHEREAS, there exists a pending initiative recently certified which if adopted would further decriminalize the use of marijuana under state law, a request to the U.S. Drug Enforcement Agency to reclassify marijuana which is yet to be acted on, and the existing state law which is a product of a partial veto by the Governor and fails to fully address impacts cited above, and existing lawsuits in other jurisdictions all of which must be monitored and incorporated into permanent development regulation in order for the City to predict with certainty what the use of marijuana in any form or what parameters of its use will ultimately be determined to be legal under state or federal law; and

WHEREAS, the City Council finds that an emergency exists within the City, and that imposing a moratorium barring the acceptance of all applications for and the issuance of business licenses or land use/development approvals/permits under the Mount Vernon Municipal Code for medical marijuana dispensaries, cultivation or related facilities such as collective gardens is necessary for the immediate preservation of the public peace, health, safety and welfare and for the support of City government and its existing institutions until additional review has been completed and any necessary code revisions have been adopted by the City Council; and

WHEREAS, a public hearing was held on the renewal of the moratorium previously adopted by the City Council under Ordinance 3558; and

WHEREAS, based on public testimony received, materials provided by federal officials regarding potential federal liability in regulating such use, conflicts with state and federal law, uncertainty within the state law due to its ambiguity, pending legislative initiatives, pending requests to reclassify marijuana under federal law, and both direct and secondary impacts to public safety, health and welfare, renewal of a moratorium is in the public interest and shall promote orderly, and thoughtfully planned land development; and

WHEREAS, the City Council adopts this Ordinance for the express purpose of fostering its substantial government interest in ensuring that the City is in compliance with state and federal law and to allow adequate time for staff to review; and

WHEREAS, the immediate renewal of a moratorium on the acceptance or processing of applications for building or land use activities involving a medical marijuana business, or facilities within which a medical marijuana business will be operated, is necessary to protect the public health, safety, or welfare and is a legitimate exercise of the City's police power.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

**SECTION 1. Findings.** That the City Council adopts the recitals set forth above as its findings of fact and constitute specific findings of the Council justifying adoption of this Ordinance renewing the moratorium as set forth herein and incorporates those recitals as if set forth fully herein.

**SECTION 2. Moratorium Imposed.** Pursuant to the provisions of RCW 36.70A.390 and RCW 35A.63.220, RCW 35.63.200, and applicable common law, a moratorium is hereby imposed on the acceptance or processing of any applications or licenses for businesses, building or permitting land use activities relating to medical marijuana dispensary or cultivation operations or facilities within which a medical marijuana dispensary or cultivation operation occurs. For the duration of this moratorium and any extensions thereto, no collective gardens as defined in RCW 69.51A.085 shall be established or located within the corporate limits of the City of Mount Vernon. This provision does not apply nor shall act to supersede possession consistent with RCW 69.51A.040 or any affirmative defense provided therefore, *provided*, that the maximum number or quantity of useable cannabis shall not exceed the limits set forth under RCW 69.51A.040 for an individual person absent an affirmative defense provided by Chapter 69.51A RCW is established.

**SECTION 3. Definitions.**

A "Medical marijuana dispensary or cultivation operation" is hereby defined as any individual, business, corporation or other entity which sells, cultivates, grows or otherwise dispenses medical marijuana.

**SECTION 4. Effective Period.** This moratorium shall remain in effect for six months from the date of its adoption unless earlier terminated or renewed if a subsequent public hearing is held and findings of fact are made prior to each renewal.

**SECTION 5.** It is the intent of the City Council to repeal the moratorium as soon as it adopts development regulations that address zoning and land use issues associated with the establishment of medical marijuana businesses, dispensaries or facilities within which such businesses are operated and collective gardens. However, if the City Council deems it necessary, the moratorium may be renewed for one or more six month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

**SECTION 6. Hearing Held.** Pursuant to RCW 36.70A.390, RCW 35.63.200, and/or RCW 35A.63.220, the City Council has held a public hearing on the renewal of its moratorium and has adopted findings of fact justifying its renewal.

**SECTION 7. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**SECTION 8. Effective Date and Declaration of Emergency.** The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority plus one of the whole membership of the Council, and that the same is not subject to a referendum. Without an immediate moratorium on the City's acceptance of business licenses, building applications, permits or other types of land use/development permits/approvals, such applications could become vested under regulations subject to change by the City in this comprehensive review and regulation amendment/adoption process. This Ordinance will not affect any existing rights, or any vested applications previously submitted to the City.

**SECTION 9. Ordinance to be Transmitted to Department.** Pursuant to RCW 36.70A.106, this Interim Ordinance shall be transmitted to the Washington State Department of Commerce as required by law.


**SECTION 10.** The City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum has discussed this Memorandum, including the "warning signals" identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2).

PASSED AND ADOPTED by the City Council of the City of Mount Vernon at a regular meeting thereof this 8<sup>th</sup> day of August, 2012.


SIGNED AND APPROVED this \_\_\_\_ day of August, 2012.

  
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Jill Boudreau, Mayor

Attest:

  
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Alicia D. Huschka, Finance Director

Approved as to form:

  
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Kevin Rogerson, City Attorney

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